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Attorney for Defendants

JPMORGAN CHASE & CO. and

CHASE BANK USA, N.A.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAII

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

JPMORGAN CHASE & CO., CHASE  
BANK USA, N.A. AND DOE

CIVIL NO. 12-00263 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

**EXHIBIT A**

DEFENDANTS 1-20,

Defendants.

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

HSBC BANK NEVADA, N.A., HSBC  
CARD SERVICES, INC., and DOE  
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00266 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

CAPITAL ONE BANK (USA) N.A.,  
CAPITAL ONE SERVICES, LLC,  
and DOE DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00268 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

DISCOVER FINANCIAL SERVICES,  
INC., DISCOVER BANK, DFS  
SERVICES, L.L.C., AMERICAN  
BANKERS MANAGEMENT  
COMPANY, INC., and DOE  
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00269 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

BANK OF AMERICA  
CORPORATION, FIA CARD  
SERVICES, N.A., and DOE  
DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00270 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

STATE OF HAWAII, *EX. REL.*  
DAVID M. LOUIE, ATTORNEY  
GENERAL,

Plaintiff,

vs.

CITIGROUP INC., CITIBANK, N.A.,  
DEPARTMENT STORES NATIONAL  
BANK, and DOE DEFENDANTS 1-20,

Defendants.

CIVIL NO. 12-00271 LEK-KSC  
(Other Civil Action)

**DEFENDANTS' JOINT MOTION  
TO FILE SUR-REPLY; EXHIBIT  
1; CERTIFICATE OF SERVICE**

*Hearing: November 19, 2012*

*Time: 9:45 a.m.*

*Judge: Hon. Leslie E. Kobayashi*

DEFENDANTS' JOINT MOTION FOR LEAVE TO FILE SUR-REPLY

Defendants CAPITAL ONE BANK (USA) NA ("COB") and CAPITAL ONE SERVICES, LLC, CITIGROUP, INC., CITIBANK, N.A. ("Citibank"), and DEPARTMENT STORES NATIONAL BANK; JPMORGAN CHASE & CO. and CHASE BANK USA, N.A. ("Chase"); DISCOVER FINANCIAL SERVICES, INC., DISCOVER BANK ("Discover"), and DFS SERVICES, LLC; BANK OF AMERICA CORP. and FIA CARD SERVICES, NA ("FIA"); and HSBC BANK NEVADA, N.A. ("HSBC") and HSBC CARD SERVICES, INC. respectfully request leave to file a short sur-reply to address a new argument raised for the first time in Plaintiff's reply brief.

In further support of this motion, Defendants state as follows:

1. Beginning on May 17, 2012, Defendants removed these cases to this Court. Certain defendants attached to their notices of removal declarations that provided supporting evidence demonstrating why this Court had jurisdiction over the actions. *See, e.g.*, No. 12-cv-263, Doc. 1-10 (Chase); No. 12-cv-268, Doc. 1-1 (Capital One); No. 12-cv-270, Doc. 1-7 (FIA).

2. Plaintiff filed motions to remand these actions to state court on June 15, 2012. Oral argument on those motions is scheduled for November 19, 2012.

3. In his opening memoranda in support of his motions to remand, Plaintiff never argued that this Court could not consider Defendants' declarations for purposes of determining whether this Court had jurisdiction over the action.

4. Defendants filed a joint opposition memoranda on October 29, 2012. *See* Doc. 75.

5. Plaintiff filed a joint reply memorandum on November 5, 2012. *See* Doc. 78. The Attorney General raised a new argument for the first time on reply, arguing that "it would constitute a violation of the well-pleaded complaint rule for the Court to consider evidence extrinsic to the Complaints in order to find federal question subject matter jurisdiction." *Id.* at 16-17.

6. Under Local Rule 7.4, "[a]ny argument raised for the first time in the reply shall be disregarded." To the extent this Court considers the Attorney

General's new argument, however, Defendants request leave to file a short sur-reply memorandum explaining why, under settled Ninth Circuit law, this Court may consider the declarations attached to Defendants' notices of removal. The proposed sur-reply is attached hereto as Exhibit 1.

7. Counsel for Chase has met-and-conferred with the Attorney General, who opposes this motion.

8. This motion is made in the interest of justice and not for any improper purpose or to cause undue delay.

Wherefore, this Court should permit Defendants to file the attached sur-reply memorandum to respond to Plaintiff's new argument on reply.

DATED: Honolulu, Hawai'i, November 14, 2012.

/s/ Thomas Benedict

THOMAS BENEDICT

ROBERT D. WICK (*Pro Hac Vice*)

EMILY JOHNSON HENN

(*Pro Hac Vice*)

ANDREW SOUKUP (*Pro Hac Vice*)

Attorneys for Defendants

JPMORGAN CHASE & CO. AND

CHASE BANK USA, N.A.

/s/ Andrew L. Pepper

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Attorneys for Defendants

CAPITAL ONE BANK (USA), N.A.

AND CAPITAL ONE SERVICES, LLC

/s/ Michael Purpura

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Attorneys for Defendants

CITIGROUP INC., CITIBANK, N.A.,

AND DEPARTMENT STORES

NATIONAL BANK

/s/ John P. Manaut

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/s/ Patricia J. McHenry

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BANK OF AMERICA

CORPORATION AND FIA CARD

SERVICES, N.A.

/s/ Michael C. Bird

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